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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC-01-107-51772

Office: Vermont Service Center

Date: JUN 21 2002

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Roney P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a horse training and breeding business. The petitioner states that it currently has no employees as it is a new enterprise. It seeks to employ the beneficiary as a horse trainer for a period of three years. The director determined that the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director determined that the petitioner had not established that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific, specialized area.

On appeal, counsel asserts that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge. Counsel further asserts that the beneficiary has the exact credentials required for the position being offered in that he has the equivalent of a bachelor's degree in Icelandic horse training from Holar Agricultural College in Iceland, the only educational institution in the world that offers formal education on Icelandic horses.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner merely

states that the beneficiary will work for Castleton Equestrian Farms as a horse trainer.

On May 8, 2001, the Service issued a notice requesting that the petitioner provide a detailed description of the duties and responsibilities of the position being offered, the educational requirements of the proposed position, and a description of how the beneficiary's education relates to the position itself.

In response, the petitioner stated that the beneficiary qualifies for the position in that he has a three-year diploma in Icelandic horse training from Holar College. However, the petitioner did not provide any additional information regarding the duties of the position.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the proffered position would normally require a bachelor's degree in horse training or its equivalent.

The record contains an advisory opinion letter from [REDACTED] Editor of "Eidfaxi," an international magazine having to do with the Icelandic horse [REDACTED] that the Icelandic horse is a horse breed unlike any other in the world because the Icelandic horse has been isolated for over a thousand years and therefore retains a unique genetic heritage.

[REDACTED] states that the beneficiary's duties as an Icelandic horse trainer would include the following:

train mature Icelandic horses; start young Icelandic horses; riding instruction on Icelandic horses; management and feeding of Icelandic horses; breeding of Icelandic horses and counseling and education for owners of Icelandic horses in the U.S.

[REDACTED] states that these are all duties that require extensive knowledge and education about Icelandic horses. She further states that, in her opinion, the position being offered is without doubt a specialty occupation. However, [REDACTED] has not provided any independent evidence which would tend to support the opinions expressed in her letter. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in this proceeding. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as horse training, for the offered position.

Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals with baccalaureate degrees in parallel positions.

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The skills and knowledge required to breed and train Icelandic horses may be different from those used to breed and train other horses, but the evidence of record does not indicate that these duties are so specialized and complex that the knowledge required to perform the duties is associated with the attainment of a bachelor's degree in a specialized area.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.